

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 478 of 1996

in

SPECIAL CIVIL APPLICATION NO 2413 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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ZARINABEN N KHAMBHATA D/O. SORABJI K MISTRY

Versus

STATE OF GUJARAT

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Appearance:

MR PRASHANT G DESAI for Appellants  
Mr.M.A.BUKHARI, AGP FOR Respondents

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.M.KAPADIA

Date of decision: 08/09/98

ORAL JUDGEMENT

( Per : C. K. Thakkar, J.)

#. Admitted. Mr.Buhari, learned Asstt. Government Pleader appears and waives service of notice of admission on behalf of the respondents - State. In the facts and circumstances of the case, the appeal is taken up for final hearing today.

#. This appeal is filed against judgement and order dated February 22,1996 passed in S.C.A. No.2413 of 1988.

#. The appellants are the original petitioners. They approached this Court by filing the above petition for quashing and setting aside order - Annexure D to the petition dated March 15,1998 passed by the competent authority and Deputy Collector, Urban Land Ceiling, Ahmedabd. By the said order passed under Section 6(1) of Urban Land (Ceiling and Regulation) Act, 1976 (herein after referred to as the 'Act'), certain portion of land was declared to be surplus under the provisions of the Act.

#. It was contended before the learned Single Judge that prior to the order impugned in the petition. An application was made by petitioner for exemption under sub-section (1) of Section 20 of the Act. The said application was rejected by the Government vide its order dated May 27,1982 - Annexure-B to the petition. The legality of the said order came to be challenged by petitioner by filing SCA No. 5585 of 1983. The learned Single Judge allowed the said petition on 1st May,1987 stating that an action was without affording an opportunity of hearing and consequential direction was issued to hear the petitioner and to pass appropriate order in accordance with law. It is stated by Mr.Desai, learned counsel for the appellant that the said application is still pending. Obviously in these circumstances, no order declaring excess land under the provisions of the Act could have been passed by the authority. When the learned Single Judge heard the matter on merits, this contention was taken by the learned counsel for the appellant. But the learned Single Judge dismissed the petition observing that in view of a binding decision of the Hon'ble Supreme Court in S. Vasudeva Vs. State of Karnataka and others, AIR 1994 SC 923 that no exemption could have been granted under sub-section (1) of Section 20 of the Act, it was not necessary to set aside the order impugned in the petition as no useful purpose would be served. Mr. Desai submitted that the decision in S. Vasudeva was overruled by a Bench of three Judges in T.R.Thandur Vs. Union of India, 1996 (1) GLH 771 (SC) in which it was held that the law laid down in S.Vasudeva was not in

consonance of the provision of the Act.

#. For the foregoing reasons,in our opinion, the LPA deserves to be allowed and accordingly allowed. The order impugned in the petition - Annexure D dated March 15,1988 is quashed and set aside. So far as the application for exemption under sub-section(1) of Section 20 lying before the State Government is concerned, we are not observing any thing on merits and the said application will be decided on its own merits in accordance with law and prayer contained in earlier SCA No. 2413 of 1998. In the facts and circumstances of the case, no order as to costs.

(C.K.Thakkar,J.)

Date : 8-9-1998 (A.M.Kapadia,J.)

(KPP)